



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

December 4, 1969

Hon. J. Pat O'Keefe
Executive Director
Texas Fine Arts Commission
825 Brown Building
Austin, Texas 78701

Opinion No. M- 531

Re: Whether funds appropriated in Item 7 of the General Appropriations Act, 61st Legislature, R.S., 1969, may be expended by the Fine Arts Commission for the purposes stated to local communities in the State of Texas.

Dear Mr. O'Keefe:

Your request for an opinion reads, in part, as follows:

"The Texas Fine Arts Commission is engaged in providing a touring program to benefit citizens of all ages in communities throughout the State of Texas. By sharing the costs in providing quality cultural programs (traditional, contemporary and classical), we intend to crystalize local interest in and support for the various creative arts and to bring to communities and neighborhoods that would not otherwise be able to afford such programs musical ensembles, choirs and other concert groups, drama and dance theatre groups and other similar performing units and visual art displays.

"In order to carry out this program, the Legislature has appropriated \$40,000 per year for the biennium ending August 31, 1971, to the Fine Arts Commission. The Comptroller of Public Accounts has questioned whether this money may be expended for such purpose in view of the provisions of Sections 50 and 51 of Article III of the Constitution of Texas. I, therefore, request an opinion on the following question:

"May funds appropriated in Item 7 of the appropriations to the Fine Arts Commission for the

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biennium ending August 31, 1971, be expended by the Fine Arts Commission for the purpose as outlined above to local communities in the State of Texas?"

The Texas Fine Arts Commission was created by the provisions of Article 61^{44g}, Vernon's Civil Statutes. Section 3 provides the duties and responsibilities of the Fine Arts Commission and reads, in part, as follows:

"Sec. 3. The duties and responsibilities of the Commission shall be:

"a. To foster the development of a receptive climate for the fine arts that will culturally enrich and benefit the citizens of Texas in their daily lives, to make Texas visits and vacations all the more appealing to the world and to attract to Texas residency additional outstanding creators in the field of fine arts through appropriate programs of publicity and education, and to direct other activities such as the sponsorship of art lectures and exhibitions and central compilation and dissemination of information on the progress of the fine arts in Texas."

Section 5 provides that "Appropriations may be made by the Legislature to the Commission to carry out the purposes of this Act."

House Bill 2, Acts of the 61st Legislature, 2nd C.S., 1969 (General Appropriations Act for the biennium ending August 31, 1971), contains the following appropriation to the Fine Arts Commission:

	"For the Years Ending August 31, 1970	August 31, 1971
"7. Touring Projects	\$40,000	\$40,000"

The rider relative to the expenditure of Item 7, supra, provides:

"The expenditure of moneys appropriated by Item 7 on any project shall be conditioned upon the funds being matched by private or Federal

funds. An affidavit signed by the Executive Director of this Commission that the matching sums have been expended, or have been made available and will be expended shall be considered suitable evidence by the Comptroller of compliance with this provision."

It is our opinion that Subdivision (a) of Section 3 and Section 5 of Article 61^{44g}, constitute pre-existing law within the meaning of Section 44 of Article III of the Constitution of Texas for the appropriation contained in Item 7 to the Fine Arts Commission. Consequently, that appropriation may be expended for the purposes outlined in your request, unless prohibited by Sections 50 and 51 of Article III of the Constitution of Texas. Section 50 of Article III of the Constitution of Texas provides as follows:

"Sec. 50. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever."

The pertinent provisions of Section 51 of Article III of the Constitution of Texas provide:

"Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; . . ."

A grant of State funds for governmental use or purposes as distinguished from private purposes is not prohibited by Sections 50 or 51 of Article III of the Constitution of Texas or any other provision of our State Constitution. State v. City of Austin, 160 Tex. 348, 331 S.W.2d 737 (1960); Bexar County v. Linden, 110 Tex. 339, 220 S.W. 761 (1920); Road District No. 4, Shelby County v. Allred, 123 Tex. 77, 68 S.W.2d 164 (1934); Jefferson County v. Board of County and District Road Indebtedness, 143 Tex. 99, 182 S.W.2d 908 (1944); City of Aransas Pass v. Keeling, 112 Tex. 339, 247 S.W. 818 (1923).

Applying the principle announced in the above cited cases to the facts presented in your request, we have concluded that the expenditure of State funds for the purpose of sharing costs in providing cultural programs to various communities and neighborhoods in the State is for a governmental purpose rather than for a private purpose. Article 6144g specifically states that it is the duty and responsibility of the Fine Arts Commission "to foster the development of a receptive climate for the fine arts that will culturally enrich and benefit the citizens of Texas in their daily lives."

You state in your request that the proposed expenditure of Item 7 is for the purpose to "crystalize local interest in and support for the various creative arts."

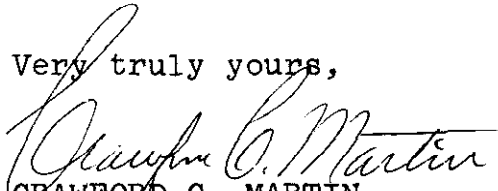
It is, therefore, our opinion that the expenditure of Item 7 to the Fine Arts Commission for the biennium ending August 31, 1971, is for the purpose of "the development of a receptive climate for the fine arts that will culturally enrich and benefit the citizens of Texas in their daily lives" and is thus for a governmental purpose as distinguished from a private purpose.

You are accordingly advised that Item 7 of the appropriation to the Fine Arts Commission for the biennium ending August 31, 1971, may be expended for the purposes described in your request.

S U M M A R Y

Funds appropriated in Item 7 of the appropriation to the Fine Arts Commission for the biennium ending August 31, 1971, may be expended for the purpose of sharing the costs in providing cultural programs to communities and neighborhoods in the State of Texas.

Very truly yours,


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APPROVED:
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